

82D CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 2400

FELIX GARCIA AND OTHERS

JULY 1, 1952.—Committed to the Committee of the Whole House and ordered to be printed

Mr. GOODWIN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 7368]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7368) for the relief of Felix Garcia and others, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to pay certain sums to several claimants fully satisfying said claims against the United States arising out of damage to private property, loss of wages, personal injuries, and death caused by military personnel or civilian employees of the Army. There are three claimants named in this proposal, whose claims total the sum of \$2,881.65.

STATEMENT OF FACTS

This proposed legislation was submitted to the Speaker of the House of Representatives and referred to this committee for consideration. After careful consideration, the committee recommend favorable consideration.

The letter to the Speaker, together with other pertinent evidence, is as follows:

DEPARTMENT OF THE ARMY,
Washington, D. C., March 28, 1952:

The SPEAKER,
House of Representatives,
Washington, D. C:

DEAR MR. SPEAKER: There is enclosed herewith a draft of a bill to provide for the payment of certain claims for damages on account of property damage, loss of wages, personal injuries, and death arising out of noncombat activities of the

Army, which the Department of the Army recommends be enacted into law. The submission of this legislation is in accordance with procedures approved by the Secretary of Defense.

The purpose of the proposed bill is to provide for the payment of three claims which cannot be administratively settled by the Department of the Army, but which have been determined by the Department to be meritorious and worthy of payment. These claims cannot be settled by the Department for the reason that there is no statute under which they may be paid. There is also enclosed herewith a memorandum setting forth the pertinent facts concerning each of the claims enumerated in the proposed bill.

Bills similar to this proposed legislation have been enacted by the Congress. (See Private Law 101, 79th Cong., approved June 11, 1945, 59 Stat. 724; Private Law 259, 79th Cong., approved November 14, 1945, 59 Stat. 791; and Private Law 7, 81st Cong., approved March 23 1949, 63 Stat. 1075.)

The total cost of the bill, if enacted, will be \$2,881.65.

The Bureau of the Budget advises that there is no objection to the submission of the proposed bill for the consideration of the Congress.

Sincerely yours,

FRANK PAGE, Jr.,
Secretary of the Army.

MEMORANDUM OF FACTS CONCERNING THE CLAIMS REFERRED TO IN THE PROPOSED BILL TO AUTHORIZE THE PAYMENT OF CERTAIN CLAIMS FOR DAMAGE TO PRIVATE PROPERTY, LOSS OF WAGES, PERSONAL INJURIES, AND DEATH ARISING OUT OF NONCOMBAT ACTIVITIES OF THE ARMY

There are submitted below a list of the claimants included in the proposed bill and statements of the pertinent facts out of which their claims arise:

1. *Felix Garcia, Barrio Naranjito, Hatillo, P. R.*

On April 21, 1941, a station wagon of the Corps of Engineers, United States Army, operated by a civilian employee of the Government on official business, was traveling in a westerly direction along the road from Borinquen Field to San Juan, P. R., at a speed estimated at between 25 and 30 miles per hour. The road was narrow and was wet and slippery from a recent rain. A Mack truck owned by Felix Garcia and operated by one Marciano Valle, carrying a load of sugarcane and two passengers, was proceeding along the same road in the opposite direction at a speed estimated at between 5 and 10 miles per hour. As the driver of the Army vehicle reached the crest of a hill he observed the civilian truck coming up the hill toward him. The Army driver thereupon applied his brakes in order to reduce his speed before passing the civilian truck, and as he did so the station wagon skidded to the left side of the road and struck the left front portion of the civilian truck, breaking the steering gear and brake hose of the latter vehicle, and causing it to roll backward down the hill and turn over in a ditch.

On December 18, 1941, Mr. Garcia filed a claim with the War Department (now Department of the Army) in the amount of \$404.65 for the damages allegedly sustained by him as the result of this accident. On January 18, 1943, the Under Secretary of War, acting for the Secretary of War, determined that the damage caused to the claimant's truck in this accident amounted to the sum of \$204.65, and, accordingly, approved his claim in that amount for report to the Congress under the provisions of the act of December 28, 1922 (42 Stat. 1066; 31 U. S. C. 215), for an appropriation for the relief of the claimant in such amount provided that he agreed to accept such sum in full satisfaction and final settlement of his claim. The claimant subsequently signed an acceptance agreement agreeing to accept the sum of \$204.65 in settlement of his claim. However, before the acceptance agreement was received by the Department, the act of December 28, 1922, *supra*, under which the claim had been approved, was made inapplicable to the War Department by the act of July 3, 1943 (57 Stat. 372; 31 U. S. C. 223b), which latter act covered only claims arising on or after May 27, 1941. There is, therefore, no statute under which the claim of Mr. Garcia, which arose prior to May 27, 1941, may be paid, although such claim is meritorious and should be paid.

Amount claimed, \$404.65; amount reported, \$204.65.

2. *Madame Henriette Buillon, 26 Rue Lucien Vallee, Petit-Quevilly, Seine Inferieure, France*

The evidence now of record in the Department of the Army shows that Andre Achille Buillon, a French citizen and the son of Madame Henriette Buillon,

was arrested in France in July 1944 by the Gestapo and taken to Germany for forced labor; that on May 4, 1945, he was seriously wounded at Zeitz, Germany, by a bullet fired by an American soldier at a prisoner who was attempting to escape; and that he died on May 7, 1945, from the wound so received by him. The fatal wounding of the decedent occurred under the following circumstances: On May 4, 1945, the decedent and a number of other French citizens, who had been taken to Germany during the war for forced labor, were being held in a camp at Zeitz awaiting their return to their homes in France. At about 8 p. m. on that date the decedent and several other Frenchmen were standing in front of their camp when a United States Army truck stopped near them. As the truck stopped a prisoner therein attempted to run away, and one of the American soldiers fired at the fugitive, and the decedent was accidentally struck by a stray bullet. The soldier who fired the bullet that struck the decedent was not engaged in combat activity at the time of this occurrence. The evidence clearly shows that the wounding of Andre Achille Buaillon was not caused by any fault or negligence on his part. The decedent was 22 years of age and unmarried at the time of his death, and it does not appear that he was engaged in any gainful employment at the time he was taken to Germany in 1944.

On October 10, 1945, Madame Buaillon, a widow, filed a claim with the United States military authorities in Germany for damages in the amount of 120,000 French francs, or \$2,421 at the rate of exchange then existing, on account of the death of her son. The claim could not be paid under the Foreign Claims Act (55 Stat. 880), as amended (57 Stat. 86), because the decedent was not an inhabitant of Germany, the country in which he was fatally wounded, a condition precedent to the approval of such claim under that act. There is no other statute available to the Department of the Army under which the claimant may be paid anything on account of the death of her son. The Department of the Army has determined that this is a meritorious claim and should be paid.

Amount claimed, \$2,421; amount reported, \$2,421.

3. *Stanley James Carpenter, 46 Linnegatan, Goteborg, Sweden*

On August 5, 1950, Mr. Carpenter, a British subject domiciled in Sweden, was a passenger in a tourist bus in Germany. When the bus reached Unterammergau, at about 12:30 a. m. on that date, five enlisted men of the United States Army, while intoxicated, entered the bus and abused the passengers. One of the soldiers then dismounted from the bus and, after the bus had started and while it was in motion, hit the rear window of the bus with his fist, breaking the glass. Miss Britt-Marie Eriksson, a Swedish tourist, who was a passenger in the bus, was cut by glass fragments from the broken window, and also sustained damage to her wearing apparel. Folke Desire l'Anglois-Nordgren, a Danish subject, and Bengt Dahlberg, a Swedish passenger, having noticed that Mr. Carpenter was not in the bus after it started, dismounted and, running to the rear of the bus, found him on the ground and one soldier in the act of pulling another soldier away from him. Mr. Carpenter was cut in the face by flying glass from the rear window of the bus when it was broken, and he states that he was struck on the head by a stone held in the hand of one of the soldiers. He also sustained bruises of the left eye, one hand, and one knee. Mr. Carpenter's suit and raincoat were extensively damaged in the incident.

On October 2, 1950, Mr. Carpenter was authorized and invited by headquarters European command, to proceed from Stockholm, Sweden, to Garmisch, Germany, to appear as a witness before a special court martial at the trial of the American soldiers involved in this incident. United States military air transportation was furnished him for the travel involved. He left Stockholm for Garmisch on October 8, 1950, and returned to Stockholm on October 12, 1950. He was paid a witness fee of \$4 per day for 6 days and a subsistence allowance of \$5 per day for 5 days. On October 11, 1951, he filed a claim with the United States military authorities in Germany for damages in the amount of \$256, itemized as follows:

Property damage (new suit torn and raincoat ruined by bloodstains),	
\$40.37; medical expenses, \$4; and loss of earnings, \$62.63.....	\$107
Personal injuries.....	129
Flight insurance for trip to Garmisch, Germany, and return.....	20
Total.....	256

The claim of Mr. Carpenter could not be approved under the Foreign Claims Act, as amended, because he was not an inhabitant of Germany, the country in which he was injured, a condition precedent to the approval of the claim under

that act. There is no other statute available to the Department of the Army under which the claimant may be paid anything on account of his injury. The Department has determined that this is a meritorious claim and should be paid.

At the request of the Department of the Army special bills (H. R. 5975 and S. 2418) have been introduced in the Eighty-second Congress for the relief of Miss Britt-Marie Eriksson and all the other persons who sustained damages as the result of the incident which occurred in Unterammergau, Germany, on August 5, 1950, except Mr. Carpenter. The name of Mr. Carpenter was not included as a beneficiary in that legislation for the reason that at the time the Department of the Army recommended the introduction of such legislation it had not received his claim in Washington and, therefore, did not know how much he claimed in damages.

Amount claimed, \$256.00; amount reported, \$256.00.

Total amount claimed-----	\$3, 081. 65
Total amount recommended-----	2, 881. 65